

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for a Certificate that the Present and Future Public Convenience and Necessity Requires or Will Require Edison to Construct and Operate a 220 kV Double-Circuit Transmission Line Between the Kramer Substation and the Victor Substation in San Bernardino County, California.

Application 89-03-026
(Filed March 22, 1989)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards The Utility Reform Network (TURN) \$118,714.42 in compensation for its substantial contribution to Decision (D.) 00-06-054.

1. Background

This proceeding began in 1989 as an application of Edison for a certificate of public convenience and necessity (CPCN) for construction of 38 miles of 220-kilovolt (kV) transmission line connecting Edison's Kramer Substation and Victor Substation and related facilities.

The new line and substation improvements became known as the Kramer-Victor Project. Edison needed the project to receive electricity to its load centers from two types of qualifying facilities: geothermal power from the California Energy Company (Cal Energy) and solar thermal power from Luz International Limited (Luz). In D.90-05-059, the Commission granted a CPCN and allocated

costs among Cal Energy, Luz and Edison's ratepayers. TURN did not participate in the certification proceedings.

Edison's expected operating date for the 220-kV line was December 1992. Cal Energy and Luz, however, sought a December 1991 operating date. To advance the operating date, Edison and Luz signed agreements under which Edison would build the substation facilities, Luz would build the transmission line, and each party would pay the other in advance of construction work. Edison began construction. Luz did not. In July 1991, Luz suspended development of its solar projects, and Edison suspended construction activity. Edison and Cal Energy agreed that power from Cal Energy would be delivered over an upgraded 115-kV transmission line. In November 1991, Luz declared bankruptcy. The Kramer-Victor Project was never completed.

On November 23, 1993, Edison and Cal Energy filed a petition for modification of D.90-05-059, asking that Cal Energy and Luz be relieved of cost responsibility for the project and that Edison be allowed to treat the project as abandoned plant for ratemaking purposes. On July 14, 1994, the Division of Ratepayer Advocates (DRA) filed a protest, later amending its filing to agree to rate recovery of \$17.1 million in project costs.

On February 17, 1995, TURN filed a petition to intervene in order to protest the petition for modification. TURN participated in June 1995 hearings on the petition. In D.96-09-039, the Commission relieved Cal Energy, but not Luz, of cost responsibility for the Kramer-Victor Project and granted Edison's request for abandoned plant ratemaking.

Ratemaking for the project became an issue in Edison's test year 1996 general rate case (GRC), which was settled. The settling parties agreed to return Kramer-Victor issues to this proceeding. (See D.96-01-011, 64 CPUC2d 241, 359.)

TURN filed a timely application for rehearing of D.96-09-039, making three arguments: (1) the decision to relieve Cal Energy of its share of project costs was not supported by the record; (2) Commission precedent did not allow abandoned plant ratemaking treatment, and (3) the finding that costs incurred by Edison were reasonable was not supported by record evidence. In D.97-01-047, the Commission rejected the first two arguments but granted rehearing on the reasonableness of Edison's costs. The Commission stated that the record was "devoid of any factual basis upon which we can rationally conclude that the costs that Edison seeks to recover in rates 'were reasonably and prudently incurred'" (D.97-01-047, 70 CPUC2d 743, 745.)

Administrative Law Judge (ALJ) William Stalder scheduled further hearings. TURN was the only party to challenge the reasonableness of Kramer-Victor Project construction costs. Edison requested recovery of \$17.1 million in project costs. DRA (and its successor organization, the Office of Ratepayer Advocates) did not submit testimony or cross-examine witnesses on construction costs. TURN engaged James Weil, a former Commission ALJ, as its witness and advocate. TURN conducted discovery, served four rounds of testimony and filed several procedural motions. TURN recommended disallowance of \$7.6 million of project costs. Hearings commenced on August 17, 1998, were suspended, resumed on April 19, 1999, then were again suspended on April 27, 1999, to allow TURN time for additional discovery.

During the course of hearings, TURN alleged that Edison had violated Rule 1, and Edison alleged that TURN and Weil had violated Rule 1 and may have violated Government Code § 87406, one of the "revolving door" provisions of the Political Reform Act. Supplemental filings on this matter were submitted by TURN and by Edison.

On August 20, 1999, TURN moved to withdraw its testimony regarding Rule 1 allegations; Edison moved to withdraw its testimony regarding Rule 1 allegations five days later. ALJ Stalder granted the motions on September 15 and withdrew from the record the TURN and Edison exhibits dealing with Rule 1.

On October 4, 1999, Edison and TURN filed a joint motion for approval of a settlement agreement that resolved all remaining issues. The agreement provided that Edison would reduce its request for recovery of Kramer-Victor Project costs by \$2.15 million and would credit ratepayers for 50% of any proceeds from the Luz bankruptcy proceeding. The Commission approved the settlement and confirmed the withdrawal from the record of exhibits relating to Rule 1 allegations. (D.00-06-054.)

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Section¹ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

¹ Unless otherwise stated, all statutory references are to the Pub. Util. Code.

“in the judgment of the commission, the customer’s presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

3. NOI to Claim Compensation

TURN filed an NOI to claim compensation as required by Section 1804(a). On July 10, 1995, ALJ Kim Malcolm ruled that TURN had met the eligibility requirements for compensation and had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

Pursuant to Section 1802(h), a party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total. The Commission has provided compensation even when the position advanced by

the intervenor is rejected.² It has also provided compensation for work done on issues that were ultimately deferred to another proceeding, at the request of the parties, in order to facilitate timely resolution of more pressing issues. (See D.01-11-053.)

A key event in the procedural history of this proceeding is TURN's filing of the application for rehearing in October 1996. Staff attorney Peter Allen, who addressed cost responsibility and ratemaking for Kramer-Victor Project costs, performed most of TURN's work prior to that event. After the Commission granted rehearing, Weil performed most of TURN's work, which addressed the reasonableness of project costs, Rule 1 allegations, and the eventual settlement. Because DRA had agreed to recovery of costs in rates before TURN intervened, TURN took the lead role in that issue. TURN did not prevail on every issue litigated prior to the decision that granted rehearing. However, approval of the settlement between Edison and TURN in D.00-06-054 resolved all issues contested after the rehearing process began.

Since the filing of the November 1993 petition for modification, the principal issue requiring Commission resolution has been rate recovery of Edison's costs for the cancelled Kramer-Victor Project. TURN contributed to D.96-09-039 by its participation in hearing and its briefs. At that time, TURN was the only party that opposed rate recovery of project costs. In D.96-09-039, TURN prevailed in its opposition to relieving Luz of a share of project costs. After rehearing, the settlement between Edison and TURN resolved all ratemaking issues, including the abandoned plant treatment authorized in D.96-09-039. On

² D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

the whole, the work of TURN attorneys Allen, Florio and Finkelstein in 1995 and 1996 made substantial contributions to issues that the Commission addressed in D.96-09-039 and finally resolved in D.00-06-054.

After the Commission ordered rehearing of D.96-09-039, all of the work of Weil and TURN attorneys Finkelstein and Florio contributed to D.00-06-054, which adopted the ratemaking settlement. The settlement saves ratepayers at least \$2.15 million, before adjustment for California jurisdictional factor. The disallowed amount is more than 18 times TURN's requested compensation.

In sum, the Commission adopted positions, reasoning, and recommendations of TURN on several major issues in these proceedings. We therefore find that TURN has made substantial contributions in the resolution of these matters.

5. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$118,374.42, plus \$340 for costs of replying to Edison's challenge of the request. The elements of the compensation request are shown in Table 1 below:

TABLE 1. COMPENSATION REQUESTED

<u>Peter Allen</u>	
\$13,967.50	75.5 hours professional time in 1995, at \$185 per hour
<u>Theresa Mueller</u>	
1,657.50	8.5 hours professional time in 1996, at \$195 per hour
<u>Robert Finkelstein</u>	
6,195.00	29.5 hours professional time in 1995 at \$210
1,815.00	8.25 hours professional time in 1996, at \$220
1,821.25	7.75 hours professional time in 1997, at \$235
3,187.50	12.75 hours professional time in 1998, at \$250
2,583.75	9.75 hours professional time in 1999, at \$265
132.50	0.5 hours professional time in 2000, at \$265
<u>Michel Peter Florio</u>	
1,625.00	6.5 hours of professional time during 1994-98, at \$250
825.00	2.75 hours of professional time during 1998-2000, at \$300
<u>TURN Expenses</u>	
426.80	Copies
115.00	LEXIS use
12.80	FAX charges
345.20	Transcript fee
78.65	Postage
18.50	Overnight mail
2.66	Telephone
<u>Consultant Fees and Expenses - James Weil</u>	
77,780.00	388.9 hours professional time during 1997-2000, at \$200
3,010.00	30.1 hours of travel time, at \$100 per hour
1,680.00	16.8 hours of compensation request time, at \$100 per hour
234.46	Copies
113.26	Postage
440.69	Travel; (bridge tolls, parking, vehicle mileage)
1.40	Telephone
305.00	FAX charges
<u>\$118,374.42</u>	TOTAL REQUEST

Spreadsheet summaries of TURN's professional hours during the years 1995-99 and associated direct expenses are set forth in Attachment A to the request for compensation. Copies of Weil's invoices to TURN, which include

similar spreadsheet summaries of hours and expenses, are set forth in Attachment B to the request for compensation.

TURN's request includes all of the time and expenses incurred by TURN and Weil for the following: Initial review and protests to the petition for modification in 1995; discovery in preparation for hearings in 1995, 1998 and 1999; testimony served in 1997, 1998 and 1999; a November 1997 protest to an Edison advice letter that sought authority to record Kramer-Victor Project costs in an interest-bearing balancing account; participation in evidentiary hearings; and negotiations and support for the settlement. TURN does not seek compensation for administrative time that Weil billed TURN during the early stages of his participation in the proceeding because of an earlier decision denying Weil compensation for administrative time. (D.99-06-002, *slip op.* at 8-10.) TURN does not seek compensation for copying costs and postage for this compensation request, since these costs are relatively minor.

5.1 Edison's Opposition to Request

In its response to TURN's request, Edison argues that no compensation should be awarded for: (1) the allegations of violation of Rule 1, and (2) the response to Advice Letter 1258-E, which led to the establishment of the Kramer-Victor Memorandum Account.

Edison argues that the time spent on Rule 1 issues should not be compensated because that work made no contribution to, and was not considered in, D.00-06-054. Edison notes that TURN's motion to withdraw its Rule 1 allegations stated that "TURN has determined that the allegations made in our testimony do not warrant further action by the Commission." (TURN Motion to Withdraw, p. 1, August 20, 1999.) The ALJ Ruling granting the motion stated that "Rule 1 allegations will then not be considered in this rehearing of Kramer-Victor reasonableness issues." (ALJ Ruling, p. 2, September 15, 1999.)

Edison points out that there is no discussion of Rule 1 issues in the settlement adopted in D.00-06-054.

TURN replies that it is prevented by Rule 51.9 from revealing the content of settlement discussions with Edison without Edison's consent, but it nonetheless stands behind its position that mutual withdrawal of Rule 1 allegations was a necessary precursor to settlement of reasonableness issues. TURN states that the Rule 1 allegations were considered by the Commission, since in the first paragraph of D.00-06-054, the Commission stated, "The parties agree to withdraw their Rule 1 violation testimony, and exhibits dealing with Rule 1 are ordered withdrawn from the record at the parties' request."

Deciding whether to award compensation when a proceeding is resolved by a settlement can be challenging because the record is limited by the confidentiality of settlement discussions (See Rule 51.9 of the Commission's Rules of Practice and Procedure) and the final decision may not address the merits of the issues involved in the proceeding. In such cases, the Commission uses its judgment and the discretion conferred by the Legislature to assess intervenor compensation requests. (See D.98-04-0590.) This is appropriate, among other reasons, because the Legislature's intent was to encourage "effective and efficient participation of all groups that have a stake in the public utility regulation process" and that such intervenors "be compensated for making a substantial contribution to the proceedings of the commission." (Pub. Util. Code § 1801.3(b), (d).) "Proceedings" include "alternative dispute resolution procedures in lieu of formal proceedings as may be endorsed or approved by the commission." (§ 1801.3(f).) In some cases, therefore, we have awarded compensation to intervenors for work done on issues that were withdrawn or deferred by agreement to facilitate resolution of other issues. See, e.g., D. 01-11-053 (deferring certain issues to another proceeding facilitated

timely resolution of more pressing issues); D.01-08-005 (settlement agreement did not address all issues raised in complaint).

Here, Rule 51.9 prevents TURN from revealing details of its settlement discussions with Edison, and we are precluded by the same rule from inquiring into the compromises and concessions that led to the settlement proposal approved in D.00-06-054. But the confidentiality of settlement discussions should not preclude TURN from recovering compensation for the work it performed on Rule 1 issues. We have previously rejected the suggestion that parties solve this type of problem by including in their settlement agreements provisions dealing with intervenor compensation for specific issues:

“We do not want an intervenor’s ability to receive compensation to be dependent on its agreement to any particular terms in the settlement documents. There should be no temptation for an intervenor to agree to certain terms affecting the greater body of ratepayers in exchange for the support of the other parties for an eventual intervenor compensation request.”

(D.95-07-035 (at page 5).) Moreover, agreement of the parties does not relieve the Commission of the duty to determine for itself whether compensation is justified under the criteria set forth in the intervenor compensation statute.

Here, Edison does not dispute TURN’s assertion that mutual withdrawal of Rule 1 allegations facilitated resolution of the reasonableness issue, and we can infer the same from the record. For this reason, and because the confidentiality of settlement discussions should not preclude compensation for issues withdrawn as part of the settlement process, we will allow compensation for that work. We note also that TURN was the only party representing consumers on the reasonableness issue.

Edison opposes TURN’s request for compensation for work on Advice 1258-E because that was part of a separate, informal proceeding, and because

TURN did not file a separate notice of intent to claim compensation. We do not agree. First, advice letter work that is directly related to a proceeding in which a customer has participated is compensable under Commission practice. In Application (A.) 97-12-020, the test year 1999 general rate case for Pacific Gas and Electric Company, the Commission awarded intervenor compensation for time spent preparing a protest to a related advice letter. (See D.00-09-068, slip op. at 17-18.) In the Line Extension Rulemaking (R.92-03-050), the Commission awarded compensation of nearly \$16,000 to two intervenors for time spent protesting utility advice letters implementing an earlier Commission decision. (D.00-01-048.)

Moreover, there is no question that TURN's protest to the advice letter made a substantial contribution to D.00-06-054. In Ordering Paragraph 2, the Commission ordered a credit of \$2.15 million, the settled disallowance, to Edison's Kramer-Victor Memorandum Account. In Ordering Paragraph 4, the Commission ordered that bankruptcy proceeds should be credited to the account. In Ordering Paragraph 3, the Commission terminated the account. Absent TURN's advice letter protest, there arguably would not have been a memorandum account, ratepayers would have paid interest on balances in another account, and the settled amount may have required adjustment for interest charges. Ratemaking treatment for Kramer-Victor Project costs was an important issue in D.00-06-054, and TURN's protest of Advice 1258-E contributed to the adopted outcome. Accordingly, we reject Edison's challenge and accept TURN's request for compensation for its work on Advice 1258-E.

5.2 Hours Claimed and Hourly Rates

TURN seeks no increase in professional rates in this proceeding. All rates claimed are those that the Commission previously has authorized.

For Peter Allen, TURN requests an hourly rate of \$185 for work performed during 1995. For Theresa Mueller, TURN seeks an hourly rate of \$195 for work performed in 1996. For Robert Finkelstein, TURN requests hourly rates of \$210 for work performed during 1995, \$220 for 1996, \$235 for 1997, \$250 for 1998 and \$265 for 1999 and 2000.

For Michel Peter Florio, TURN asks an hourly rate of \$250 for work performed in fiscal years 1994-95 through 1997-98, and \$300 for work performed in fiscal years 1998-99 and 1999-2000. For James Weil, TURN seeks approval of an hourly rate of \$200 for professional work performed during 1997-2000, and one-half of that rate for travel time associated with professional work and for preparation of the compensation request, consistent with Commission practice.

Allocation of TURN's professional hours by major issue is set forth in Attachment D to the request for compensation.

The hours and rates claimed by TURN are reasonable. TURN also appropriately breaks down time spent on various issues and activities. We find the hourly rate request and the request for fees to be reasonable.

5.3 Other Costs

The claims by TURN for costs relating to photocopying, postage and related administrative activities are supported by records attached to the requests and represent reasonable amounts which we adopt here. TURN requests that an additional \$340 be added to its compensation request for the time spent preparing a response to Edison's objections. We will award the additional \$340 to TURN.

6. Award

We will award TURN the amount requested for substantial contributions to D.00-06-054. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month

commercial paper rate), commencing the 75th day after TURN filed this compensation request, not counting the number of days between the date of this Interim Decision and the date of a Final Decision, and continuing until full payment is made.

Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being reduced.

Findings of Fact

1. TURN has made a timely request for compensation for its contributions to D.00-06-054.
2. TURN contributed substantially to the Commission's decision in these proceedings.
3. The hourly rates for attorneys and experts for TURN and Weil are no greater than the market rates for individuals with comparable training and experience.
4. The miscellaneous costs incurred by TURN and Weil in these proceedings are reasonable.
5. TURN has shown that all of its claimed expenses are reasonable and in compliance with §§ 1801 – 1812.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$118,714.42.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

ORDER

IT IS ORDERED that:

1. The Utility Reform Network (TURN) will be awarded compensation for its substantial contribution to Decision (D.) 00-06-054. Southern California Edison Company (Edison) shall be responsible for payment of this award of compensation.

2. Edison shall pay TURN \$118,714.42 plus interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning December 19, 2000 until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated _____, 2002 at San Francisco, California.